

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

ALBERTO CARDONA,

Plaintiff,

v.

KILOLO KIJAKAZI, *in her official
capacity as Acting Commissioner of the
Social Security Administration,*

Defendant.

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EP-21-CV-00142-DCG

ORDER ACCEPTING REPORT AND RECOMMENDATION

After prevailing in his appeal of Defendant Kilolo Kijakazi’s decision to deny his claim for disability insurance benefits and supplemental security income, *see* Mem. Op., ECF No. 20, Plaintiff Alberto Cardona moved for an award of

- (1) \$5,219.69 in attorney’s fees;
- (2) \$17.58 in expenses; and
- (3) \$402 in costs,

Mot., ECF No. 22; Mem. Support, ECF No. 23. The Court referred Plaintiff’s Motion to United States Magistrate Judge Robert F. Castañeda for a report and recommendation, *see* Standing Referral Order,¹ which he issued on March 17, 2023, *see* R. & R., ECF No. 25. Neither Plaintiff nor Defendant objected to Judge Castañeda’s recommendations.² The Court **ACCEPTS** Judge Castañeda’s Report and Recommendation.

¹ Standing Order Referring Social Security Cases (May 3, 2012), *available at* <https://www.txwd.uscourts.gov/wp-content/uploads/2022/12/Standing-Order-Referring-Social-Security-Cases.pdf>.

² The parties had “14 days after being served with a copy of the recommended disposition” to “file specific written objections to [Judge Castañeda’s] proposed findings and recommendations.” FED. R. CIV. P. 72(b)(2); *see also* 28 U.S.C. § 636(b)(1); R. & R. at 5 (warning parties that “failure to file

I. STANDARD OF REVIEW

When reviewing a magistrate judge’s report and recommendation, the district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also* FED. R. CIV. P. 72(b)(3). Where, as here, no party objects to the report and recommendation, the district court reviews it solely for clear error, an abuse of discretion, or conclusions that are contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989); *Morales v. Carrillo*, --- F. Supp. 3d ----, 2022 WL 4075254, at *5 (W.D. Tex. Sept. 2, 2022). A report and recommendation is, for example, clearly erroneous when a court “is left with the definite and firm conviction that a mistake has been made.” *Fisher v. Lufkin Indus., Inc.*, 847 F.3d 752, 759 (5th Cir. 2017) (quotation omitted).

II. THE REPORT AND RECOMMENDATION

Plaintiff seeks (1) \$5,219.69 in attorney’s fees; (2) \$17.58 in expenses; and (3) \$402 in costs under the Equal Access to Justice Act (EAJA). Mot. at 1; *see also* 28 U.S.C. § 2412. Invoking his purported assignment of any EAJA award in this case, Plaintiff asks the Court to award the fees, expenses, and costs directly to his attorney, Howard D. Olinsky. Mot. at 1; Assignment, Mem. Support Ex. A, ECF No. 23-1; *see also* R. & R. at 1.

Defendant does not dispute that Plaintiff is entitled to the EAJA award he seeks. Resp., ECF No. 24, at 1. Defendant does, however, ask that the Court reject Plaintiff’s request that the award be paid directly to his attorney. *Id.* at 1–3; *see also* R. & R. at 2–4.

written objections to the proposed findings, conclusions, and recommendations . . . within fourteen days of service of same, may bar de novo determination by the district judge of an issue covered”). Plaintiff and Defendant received notice of the Report and Recommendation *via* the Court’s CM/ECF system the day Judge Castañeda issued it, *see* Filing Receipt, ECF No. 25, so their deadline to object expired on March 31, 2023.

Judge Castañeda held that Plaintiff “is entitled to an EAJA award” and that his request is reasonable. R. & R. at 2 (citing 28 U.S.C. § 2412(a), (d)(2)(A)). But Judge Castañeda concluded that Plaintiff’s EAJA award should be paid directly to him, not his attorney. *Id.* at 2–3; *see also, e.g., Dieckow v. Saul*, No. 5-19-CV-796-RBF, 2020 WL 13441547, at *3 (W.D. Tex. July 17, 2020) (“Whether the Commissioner pays the fees award to [a plaintiff] directly or in care of [his] counsel is left to the Commissioner’s discretion.”).


III. CONCLUSION

Having carefully reviewed Judge Castañeda’s Report and Recommendation, the Court concludes that his findings are not clearly erroneous or contrary to law, and that he did not abuse his discretion. *See Wilson*, 864 F.2d at 1221.

Accordingly, the Court **ACCEPTS** Judge Castañeda’s “Report and Recommendation” (ECF No. 25) and **GRANTS IN PART** and **DENIES IN PART** Plaintiff Alberto Cardona’s “Motion for Attorney’s Fees Pursuant to the Equal Access to Justice Act” (ECF No. 22). The Court **GRANTS** Plaintiff’s request for (1) \$5,219.69 in attorney’s fees; (2) \$17.58 in expenses; and (3) \$402 in costs. The Court **DENIES** Plaintiff’s request that the award be made payable directly to his attorney.

The award shall be made payable to Plaintiff and mailed to Plaintiff’s attorney at the attorney’s address on record.

So ORDERED and SIGNED this 11th day of April 2023.


 DAVID C. GUADERRAMA
 UNITED STATES DISTRICT JUDGE